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IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

October Term, 1973

NO. 73-301

H. GORDON HOWARD, INDIVIDUALLY, AND AS TRUSTEE FOR GLADYS IOLA HOWARD AND TIMOTHY GORDON HOWARD, THE ADULT AND MINOR BENEFICIARIES OF THE HOWARD LAND TRUST,

PETITIONER,
IN PROPIA PERSONA,

VS.

THE COUNTY OF WELD; THE COUNTY COMMISSIONERS OF WELD COUNTY AND STATE OF COLORADO,

RESPONDENT,

---

(2)

PETITION FOR A WRIT OF CERTIORARI

To the United STates Court of Appeals for the Tenth Circuit

H. GORDON HOWARD,
PETITIONER,
IN PROPIA PERSONA.

2470 South Ivanhoe Place,
Holly Hills,
Denver, Colorado,
80222

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NO.

H. GORDON HOWARD, INDIVIDUALLY, AND AS TRUSTEE FOR GLADYS IOLA HOWARD AND TIMOTHY GORDON HOWARD, THE ADULT AND MINOR BENEFICIARIES OF THE HOWARD LAND TRUST,

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RESPONDENT.

PETITION FOR A WRIT OF

CERTIORARI

To the United States Court of Appeals for the Tenth Circuit

TO: The Honorable Warren E. Burger, Chief Justice, and the Associate Justices of the Supreme Court of the United States of America:

H . GORDON HOWARD, PRO SE, the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, dismissing his complaint for failure to state a claim under F.R.C. P. 8 (a), entered in the within case on July 9, 1973.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is affixed hereto as an Appendix. The dockets are No. 72-1513, and was apparently typed as an unpublished opinion and order of dismissal, filed in the cause on July 9, 1973.

JURISDICTION

The date of the order and judgment sought to be reviewed and time of entry is July 9, 1973.

The jurisdiction of the Supreme Court of the United States is invoked under Amendment XIV, Section 1 of the Constitution of the United States, and under Title 28 U.S.C.A., Section 1331, A federal Question.

I. QUESTION PRESENTED FOR REVIEW:

Whether Plaintiff's Amended Complaint with the permission of the

Court, upon a Federal Question Under Title 28, U.S. C. A., Section 1331 alleges a sufficient claim to withstand a motion to dismiss for failure to state a claim under the provisions of Rule 8 (a) of the F.R. C. P.?

II. STATUTES INVOLVED, AND CONSTITUTIONAL PROVISIONS INVOLVED:

1. Title 28 U.S. C. A., Section 1331 is involved and states:

The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $ 10,000, exclusive of interest and costs, and arises under the Constitution laws or treaties of the United States.

2. The 14th Amendment to the Constitution of the U.S. is involved

and states: U.S . C. A. Constitution, Amendment 14, Section 1--All persons born or naturalized in the U.S. and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The interpretation of Rule 8 (a) in relation to Plaintiff's Amended Complaint , as stating a claim, is involved--Rule 8 (a) of the F.R.C. P.

III. CONCISE STATEMENT OF THE CASE

Plaintiff's complaint,as trustee for the Pine Lake Trailer Resort and

Campground inter vivos trust, alleged that the defendants under an unconstitutional zoning ordinance of the County of Weld,State of Colorado, described in the amended complaint in paragraph 3 thereof, were depriving the plaintiff of his property, and personal rights and privileges, and immunities, without due process of law, and without equal protection of the laws, as guaranteed by the 14th Amendment to the U.S. Constitution.

The jurisdiction of the federal courts was invoked under Title 28, U.S.C.A.,Section 1331, a Federal Question, where a State statute conflicts with the provisions of the United States Constitution.

The United States Circuit Court of Appeals dismissed the Plaintiff's Amended Complaint on the ground that it failed to state a claim as provided for

in Rule 8 (a) of the F.R.C. P.

The Plaintiff had alleged more than the jurisdictional amount of $10,000.00 in his complaint as the value in controversy.

Plaintiff prayed for an injunction in his complaint prohibiting the defendants from using their unconstitutional zoning ordinance to deprive him of his constitutional rights under the 14th Amendment of the United States Constitution. The Plaintiff further prayed for damages in excess of the jurisdictional requirement of the federal district court,and requested such further, other and additional relief as might appear to the court to be just, proper, meet, and reasonable.

IV.
REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

1. The decision of the Court of Appeals is in direct conflict with the decisions of other courts of appeals under the law and facts alleged in the complaint.

2. The decision of the Court of Appeals for the Tenth Circuit is in direct conflict with the decisions , and law of the cases, already heretofore decided by this Honorable Supreme Court of the United States of America.

3. The decision of the Court of Appeals for the Tenth Circuit has so far departed from the accepted and usual course of judicial proceedings in cases of this kind and nature, and has so far sanctioned such a departure by the Colorado Federal District Court, as to call for an exercise

of this Court's power of supervision.

V. ARGUMENT AMPLIFYING THE REASONS FOR ALLOWANCE OF THE WRIT OF CERTITORAI, TO WIT:

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(1) The Plaintiff's Amended Complaint states a good and sufficient claim under Rule 8 (a) of the F.R.C. P., as heretofore decided by this Honorable Supreme Court of the United States in the following cases:

(a) The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim, but require only a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is, and the grounds upon which it rests, citing Conley vs. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 80, referring therein to the case of

Maty

VS . Grasseli Chemical Co. , 303 U. S. 197, 82 L.Ed. 745, 58 S. Ct. 507, which holds that technical rules of pleading as a game of skill are rejected by the Federal Rules of Pleading--all pleading shall be construed by the federal rules to do substantial justice, and any pleading giving fair notice of a claim is adequate.

The case of McFaul VS. Ramsey, 61 U.S. 523, 20 Howard 527, 15 L.Ed. 1010 holds that pleadings that set forth the nature of the wrong complained of, and the remedy sought, are sufficient. And, the case of McMicken VS. Webb, 36 U.S. 25, 9 L.Ed. 618, 11 Peter 25, holds that the object of a complaint is simply to set forth the cause of action with a prayer that defendants be cited to answer to the demand set up against them.

2. The Plaintiff's Amended Complaint allegations of a claim set forth facts that entitled him to an injunction against the defendants use of their unconstitutional zoning ordinance to deprive him of his rights under the 14th Amendment to the federal Constitution, and to such other and further relief as the court may grant to plaintiff, as shown by the following Supreme Court of the United States decisions: to wit:

(a) The case of Nectow VS. City of Cambridge, 277 U.S. 183, 188, 48 Sup.Ct. 447, 448, 72 L.Ed. 842 held: "Zoning regulations cannot be imposed if they do not bear a substantial relation to the public health, safety, morals, or general welfare. Nor can they be imposed if they are unreasonable

or arbitrary, or confiscatory, without having any relationship to the so-called 'police power'. The Supreme Court of the U.S. case, entitled Washington Ex. Rel. Seattle TITLE Trust Co. VS. Roberge, 278 U. S. 116, 49 S.Ct. 50, 73 L.Ed . 210 held the same way as did Nectow VS. The City of Cambridge , supra, 277 U.S. 183, and went on to say at pages 213 and 214: "The right to devote real estate to any legitimate use is property within the protection of the U.S. Constitution.

(b) The opinion of the U.S. Circuit Court of Appeals for the Tenth Circuit herein mentioned is in direct conflict, without any exceptions, to the decisions of all other Federal Courts of Appeal.

The following are some of the decisions reported, to wit:

A. City of Dayton Ohio VS. City Ry.Co., 16 Fed. 2nd 401, holding that a zoning ordinance that will heap vast accumulating penalties, fines, and imprisonment, and interruptions of business on a plaintiff unless the federal court protects the plaintiff's rights under the 14th Amendment to the U.S. Constitution, will be enjoined by the federal courts.

See also the following: Dennis VS. Village of Tonka Bay, 151 Fed. 2nd 411, holding that the federal court has jurisdiction of an action to enjoin enforcement of a zoning ordinance as one arising under the Constitution of the U.S., on the ground that the ordinance deprived the plaintiff of property without due process of law, and also denied plaintiff the equal protection of law in violation of

U. S.C. A., Constitutional Amendment 14.

To the same effect see the following cases:

1. City of Cleveland Vs. Cleveland City Railroad Co., 94 Fed. 385, Affirmed 24 S.Ct. 756, 194 U.S. 517, 48 L.Ed. 1109; and Kentucky Power and Light Co. VS. City of Maysville, 36 Fed. 2nd 816; and East ST. Louis Ry.Co. VS. City of East St. Louis, 13 Fed. 2nd 852; and the United States Supreme Court Case of Home Telegraph & Telephone Co. VS. City of Los Angeles, 33 Sup.Ct. 312, 227 U.S. 278, 57 L. Ed. 510.

The Plaintiff Howard herein stated a good and sufficient claim against the defendants (now respondents) under Rule 8 (a) of the F.R. C. P., in accordance with all the foregoing law and argument set forth herein.

VI. For the foregoing reasons, the writ of certiorari should be granted.

Dated: August 9, 1973

H. Gordon Howard,
Petitioner for Certiorari
In Propia Persona,

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80222
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UNITED STATES COURT OF APPEALS

Jul 9 1973

HOWARD K. PHILLIPS
CLERK, UNITED STATES
COURT OF APPEALS
TENTH CIRCUIT

TENTH CIRCUIT

JULY TERM, 1973

H. GORDON HOWARD, individually, and as Trustee for Gladys Iola Howard and Timothy Gordon Howard, the adult and minor beneficiaries of the Howard Land Trust,

Plaintiff-Appellant,

v.

THE COUNTY OF WELD, THE COUNTY COMMISSIONERS OF WELD COUNTY, and STATE OF COLORADO,

Defendants-Appellees.

No. 72-1513

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

(D.C. C-3640)

Appellant filed a memorandum in opposition to summary affirmance pro se.

Before LEWIS, Chief Judge, and PICKETT and SETH, Circuit Judges

PER CURIAM

Appellant, H. Gordon Howard, owns and operates a trailer park and campground on land situated in Weld County, Colorado. He

brought suit in the district court seeking damages and a permanent injunction enjoining the defendants from enforcing a Weld County zoning ordinance. He alleges that the ordinance unreasonably restricts the degree to which he can further expand his existing facilities in violation of his fourteenth amendment rights. Jurisdiction is alleged under 28 U.S.C. §1331. The district court dismissed the complaint and granted leave to file an amended complaint. After reviewing the complaint, and amended complaint, the district court denied relief. We affirm.

The district court dismissed appellant's suit on the grounds that it lacked jurisdiction and that it should abstain from deciding the issues presented prior to the presentation of such issues to the Colorado state courts. We affirm on the ground that the appellant fails to state a claim upon which relief could be granted.

No reference is made in either the compiaint or the amended complaint to the specific ordinance which is alleged to be unconstitutional, and the complaint is permeated with opinions and assertions that the ordinance in issue is "arbitrary" and "contrary to Plaintiff's inalienable rights." Specific factual allegations in support of such opinions and assertions are lackin., and the

complaint fails to state a claim upon which relief could be granted. See Coopersmith v. Supreme Court, State of Colorado, 465 F.2d 993 (10th Cir. 1972); International Harvester Co. v. City of Kansas City, Kansas, 308 F.2d 35 (10th Cir. 1962), cert. den. 371 U.S. 948 (1963); Ogden River Water Users' Association v. Weber Basin Water Conservancy, 238 F.2d 936 (10th Cir. 1956).

Upon docketing in this court, appellant was notified that we were considering summary affirmance and of his right to file a memorandum in opposition to such action. We now have appellant's response before us. Nevertheless, after a careful and thorough review of the record and files in this case, we are convinced that the judgment of the district court was correct.

AFFIRMED.